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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,265	01/16/2004	Frederic Legrand	05725.1297-00	5707

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EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 06/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/758,265	Applicant(s) LEGRAND ET AL.	
	Examiner Eisa B. Elhilo	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1 This action is responsive to the amendment filed on April 20, 2006.

2 The rejection of claim 8 under 35 U.S.C. 112, second paragraph, is withdrawn because of
the applicant's amendment.

3 The rejection of claims 1-64 under 35 U.S.C. 103(a) as being unpatentable over Legrand
et al. (US' 401 B1) in view of Lorant et al. (US' 490 A1) is maintained for the reasons set forth
in the previous office action mailed on February 2, 2006.

Response to Applicant's Arguments

4 Applicant's arguments filed 4/20/2006 have been fully considered but they are not
persuasive.

With respect to the rejection of claims 1-64 under 35 U.S.C. 103(a) as being unpatentable
over Legrand et al. (US' 401 B1) in view of Lorant et al. (US' 490 A1), Applicant argues that the
Examiner has not shown and cannot show that such teaching and motivation for combination
and/or modification flow from Legrand and Lorant. Applicant also argues that Legrand does not
require the use of mineral or plant oils. Applicant further argues that the examiner's broad
statement that optimizing the amount of the organic liquid in order to get the maximum effective
amounts of these ingredients in the bleaching composition does not provide the necessary
showing of motivation to modify Legrand to obtain the presently claimed parameters for these
ingredients.

The examiner respectfully disagrees with the above arguments because the use of patents
as references is not limited to what the patentees describe as their own inventions or to the
problems with which they are concerned. They are part of the literature of the art, relevant for all

Art Unit: 1751

they contain. “*In re Heck*, 699 F.2d 1331, 1332-33 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re Iemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). Further, a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed.Cir.), *cert. denied*, 493 U.S. 975 (1989). In this case Legrand et al. (US’ 401 B1) as a primary reference, teaches anhydrous composition for bleaching keratin fibers comprising at least one alkalizing agent, at least one peroxygenated salt (see col. 6, lines 1-3), hydrogen peroxide as an oxidizing agent (see col.20, line54-56), surfactants (see col. 18, line 60) and organic liquid such as mineral oils and plant oils (see col. 6, lines 26-27). Legrand et al. (US’ 401 B1) also suggests the use of copolymers in the bleaching composition as thickening agents (see col. 45-57). Lorant et al. (US’ 490 A1) in analogous of hair treating formulation, teaches a composition comprising amphiphilic copolymers of the claimed invention (see page 2, paragraphs, 0020-0033), hydrocarbon based plant origin oils and fatty acid esters and mineral oils such as polydecenes and wherein the fatty phase (or oily phase) may range from 5 to 80% (see pages 5 and 6, paragraphs, 0090-0096). Therefore, there is a clear suggestion and sufficient motivation to one having ordinary skill in the art to be motivated to incorporate the amphiphilic copolymers as taught by Lorant et al. in the composition of legrand et al. to arrive at the claimed invention with a reasonable expectation of success for stabilizing the bleaching composition.

With respect to the applicant’s argument based on the optimization of the amounts of the organic liquid, the examiner would like to point out that a patent will not be granted based upon the optimization of result effective variable when the optimization is obtained through routine

Art Unit: 1751

experimentation unless there is a showing of unexpected results which properly rebuts the prima facie case of obviousness, see *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F. 2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Further, applicant has not shown on record the criticality of the claimed ingredients over the composition of the closest prior art of record.

6 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Eisa Elhilo
Primary Examiner
Art Unit 1751

June 17, 2006